(1)

CF1002

(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 2138 OF 2004

PARDESI RAM, AGED ABOUT 26 YEARS, S/O MANOHAR SURYAVANSHI, OCCUPATION: SARPANCH, GRAM PANCHAYAT, CHAKARBEDA (BAKARBEDA), TAHSIL: MASTURI, RESIDENT OF CHAKARBEDA, DISTRICT: BILASPUR (C.G.)

P.R. No. 1943/04 Presented by Shri Shailendra Shukla dated 7-7-04

PETITIONER

VS

1. STATE OF CHHATTISGARH THROUGH; THE COLLECTOR, BILASPUR, DISTT: BILASPUR (C G).

2. THE SUB DIVISIONAL OFFICER, (REVENUE), BILASPUR, TAHIL & DISTT BILASPUR (C G).

RESPONDENTS

RECEIVED COPY 7-7-04 Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 227 & 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC OR DIRECTION(S) /ORDER(S) IN THE LIKE NATURE ETC.

1. **PARTICULARS OF THE PETITIONER** :

   As mentioned above in the cause title.

2. **PARTICULARS OF THE RESPONDENTS :**

   As mentioned above in the cause title.

(83)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P. 2138/2004 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	28-10-2004	

Dr. N.K. Shukla, Senior Advocate with Shri Vaibhav Mishra and Shri Shailendra Shukla, Advocates for the petitioner.

Shri Sanjay S. Agrawal, Government Advocate for the State/respondent.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India questioning the order dated 21-1-2003 passed by the Sub Divisional Officer (Prescribed Authority) whereby the petitioner has been removed from the post of Sarpanch under Section 40 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993.

Brief facts leading to filing of this petition are that the petitioner contested the election for the post of Sarpanch of Gram Panchayat, Chakarbeda held in the year 1999 and he was elected as Sarpanch. While he was working as Sarpanch, some complaint was filed against the petitioner. On that complaint the S.D.O. directed for preliminary enquiry. The Preliminary Enquiry was conducted by Panchayat Evam Samaj Shishak Sangthak, Masturi. On receiving the enquiry, the S.D.O. issued notice to the petitioner to which the petitioner filed reply. However, the S.D.O. vide impugned order while treating the charges proved against the petitioner, passed the order for removal.

Gt. PRJ—FS/350—12/2000—50,000.

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

The grounds on which the said order has been challenged are that the enquiry was not conducted in conformity with Section 40 of the M.P. Panchayat Raj Adhiniyam, 1993. The Preliminary enquiry was conducted on the back of the petitioner and was submitted to the Prescribed Authority. Even though on receiving the enquiry report, show cause notice was served on the petitioner and he filed reply to the same, but the copy of the complaint and enquiry report was not served upon the petitioner. The petitioner was not given opportunity to participate in the enquiry and he was not allowed to cross-examine the witnesses.

I have heard learned counsel for the parties.

Dr. Shukla, learned Senior Advocate for the petitioner argued that the enquiry was conducted by Panchayat Evam Samaj Shishak Sangthak on the back of the petitioner and no opportunity was given to the petitioner to cross-examine the witnesses. Similarly, the Prescribed Authority also, while giving show cause notice, had not served copies of the complaint, enquiry and the statements of the witnesses on the petitioner. Even no opportunity of hearing was given to the petitioner.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

On the other hand, learned Govt. Advocate argued that from the appellate order of the Additional Collector dated 11th June 2003 it is clear that sufficient opportunity was given to the petitioner.

Having heard learned counsel for the parties, I have perused the records of the petition. Copies of the statements of the witnesses have been annexed with the petition as Annexures-P/9 and P/10. Perusal of the statements of the witnesses reveals that opportunity to cross-examine the witnesses was not given to the petitioner. Similarly, perusal of the order sheet dated 9-10-2002 reveals that the notice was issued to the petitioner for 26-10-2002 on which date the petitioner appeared and he replied against the show cause notice in which the petitioner denied the charges. Thereafter, that enquiry report was sent for approval of the same by Gram Sabha. The report was received on 17-1-2003 and on 21-1-2003 the order was passed.

In the order sheets it has not been mentioned that the opportunity of hearing was given to him, therefore, compliance of proviso to Section 40 of the Madhya Pradesh Panchayat Raj Adhiniyam, 1993 was not made in this case. The opportunity has also not been given to the petitioner to cross-examine the witnesses who deposed against him. Therefore, on this ground only the impugned

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

order removing the petitioner based on the enquiry is liable to be quashed. For this, I am fortified by the judgment of the High Court of Madhya Pradesh in the matter of **Kailash Kumar Parmanand Dangi V. State of M.P. and others** reported in **1999 (2) MPLJ 722.**

In the result, the petition is allowed and the impugned order is quashed.

Parties are entitled for certified copy of this order.

Sd/-
L.C.BHADOO
Judge

Barve/Sunita

29.10